## Petitioner \* \* \* \* \* \* \* \* \* \*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve the nonconforming use of the subject property as a tavern, and additionally, approval of off-street parking and access thereto, all as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared, testified and was represented by Counsel, Patrick Cavanaugh, Esquire. Also appearing on behalf of the Petition were Frank S. Lee, Registered Professional Engineer; Regina Krysiak; Irene Zubrowski; Evelyn M. Klippi; Mr. & Mrs. Herman C. Meusel; Marie Fryza; Marie Lewis; and Gertrude Bradley. There were no Protestants.

Testimony indicated that the subject property, zoned D.R. 5.5, is located at the corner of Fait and Wilson Avenues and is currently improved with both a dwelling and a tavern. The Petitioner testified that there were actually three lots that were the subject of this case. At the request of the Zoning Commissioner, Petitioner's Exhibit A was submitted following the hearing which clearly identifies the three lots as Lots 40, 41 and 42. The Petitioner requests the establishment of a nonconforming use for a tavern at 6903 Fait Avenue and for off-street parking for the tavern at the rear of all three lots. The property was purchased by the Petitioner in 1961 and consists of approximately .23 Acres. The evidence clearly establishes that the building at 6903 Fait Avenue has existed in

tavern began as early as 1941. The parking at the rear of both 6901 and 6903 Fait Avenue has taken place since 1941.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether the use is a different use, and therefore, breaks the continued nature of the non-conforming or is the same use. If the change in use is found to be different than the original use, the current use of the property shall not be considered non-conforming. See McKemy v. Baltimore County, Md., 39 Md. App.257, 385 A2d. 96 (1978).

The evidence in this case indicates that the subject property has never been damaged by fire or other means that resulted in the property actually being closed. Most of the witnesses claimed they have lived in the area for more than 40 years and have never known the tavern to be closed except on Sundays, holidays, or during vacations. They also state that the tavern use has not changed its scope, area, or nature.

After due consideration of the testimony and evidence presented, it is clear that the requirements of the B.C.Z.R. have been complied with and as such, the Petition for Special Hearing for approval of a nonconforming use for a tavern upon the subject site should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be granted.

THEREFORE, IT IS, ORDERED by the Zoning Commissioner for Baltimore County this 3th day of June, 1988 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a tavern, and additionally, to approve off-street parking and access thereits present form, style and use since approximately 1941. There is some evidence that its current use and the exact size, shape and dimensions of the building have not changed since the late 1930s.

The evidence clearly establishes that the one story building at this location has not been expanded, changed, damaged, or in any way altered in a major fashion since at least 1942. That since at least the late 1930s, it has been continuously used as a tavern. There is no indication of any lapse in the use of the subject property as a tavern since before 1945. In addition, there has always been access to the parking area for the tavern from both Fait Avenue and across the rear of the property at 6901 Fait Avenue from Wilson Avenue. The testimony and exhibits presented at the hearing tend to indicate that there once was an old garage located at the rear of 6901 Fait Avenue which was removed in the 1960s to allow better access to the parking area from Wilson Avenue.

The Petitioner is seeking a nonconforming use of the subject property as a tavern and the continuation of the off-street parking area at the rear of both 6901 and 6903 Fait Avenue to support the tavern operation. The Petitioner claims she has a nonconforming use in both instances because the tavern pre-dates the zoning regulations for Baltimore County.

Zoning was officially enacted in Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature

to, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, from and after the date of this Order.

JRH:bis

Zoning Commissioner for Baltimore County

authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first zoning regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Those regulations created seven zones, four being residential, one commercial, and two industrial. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978). Those original regulations also provided for nonconforming uses. That statute read as follows:

> "A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning requlations on March 30, 1955. The subject of a nonconforming use was dealt

th in Section 104.1. That Section read:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 28-478-SPH

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a non-conforming use due-to-the-fact that the-property-has been

used as a bar/tavern since prior to-1945 when the Baltimore County Zoning Laws were first adopted

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon fil-ing of this Petition, and further agree to and are to be bound by the zoning regulations and restric-tions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

under the penalties of perjury, that I/we are the legal owner(s) of the property of this Petition. Legal Owner(s): Clara Ziemski Potrzuski Claro Zuraki Potrzuski (Type or Print Name) Prior Case E-34,655 6901/03 Fait Avenue 282-0981 Baltimore, Maryland 21224 City and State Name, address and phone number of legal owner, contract purchaser or representative to be contacted 1222 Patrick Cavanaugh, Esq. 2 N. Dundalk Avenue 285-0022

ORDERED By The Zoning Commissioner of Baltimore County, this 30th y the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the

et forblis 88 at 11am

Zoning Commissioner of Baltimore County

ESTIMATED LENGTH OF HEARING -1/2HR. AVAILABLE FOR HEARING MON./TUES./WED. - NEXT TWO MONTHS

nonconforming use of a building, structure, or parcel or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was amended to its current form on March 15.

1976. The current regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatscever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (7.1) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shell terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. (B.C.Z.R., 1955; Bill No. 18, 1976)"

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation created an exception to the general monconforming rule in cases concerning special exception office buildings. That Section reads as follows:

> "Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)."

controlling date for the beginning of zoning.

As with all non-conforming use cases, the first task is to determine what lawful use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the

The testimony in this case clearly establishes that the tavern use on the subject property began prior to 1945. In fact the use as a

· #14.

#338

FRANK S. LEE

Registered Land Surveyor

1277 NEIGHBORS AVE. -- BALTIMORE, MD. 21237

February 12, 1988

Nos. 6901 - 03 Fait Avenue 12th District Baltimore County, Maryland

Beginning for the same southeast corner of Fait and Wilson Avenues as laid out and shown on the plat of Harbor View, said plat being recorded among the land records of Baltimore County in Plat book 5 folio 80; thence running and binding on Fait Avenue as follows North 48 degrees 31 minutes 46 seconds East 70.77 feet and North 86 degrees 09 minutes 30 seconds East 54.20 feet, thence leaving Fait Avenue for two lines of division as follows: South 3 degrees 50 minutes 30 seconds East 125 feet and South 86 degrees 09 minutes 30 seconds West 47.20 feet to the northeast side of Wilson Avenue and thence running and binding on the northeast side thereof North 41 degrees 28 minutes 08 seconds West 103.27 feet to the place of beginning.

> Being lots 40,41 and 42 on plat of Harbor View. Containing 0.23 acres of land more or less.



494-3353

IN THE MATTER

THE PETITION OF

CLARA ZIEMSKI POTRZUSKI

BALTIMORE, MARYLAND 21222

Baltimore County Zoning Commissioner Office of Planning and Zoning Room 406, 401 Bosley Avenue Towson, Maryland 21204

ZONING COMMISSION

Attention: Gwendolyn Stevens

RE: Petition for Special Hearing Petitioner: Clara Ziemski Potrzuski 6901/6903 Fait Avenue Case No. 88-478-SPH

Dear Ms. Stevens:

In accordance with our conversation, this is to confirm that the captioned matter, originally scheduled for hearing on June 8, 1988, has been postponed due to a conflict in my trial

LAW DFFICE PATRICK CAVANAUGH

CHARTERED

2 N. DUNDALK AVENUE

301-285-0022

April 20, 1988

The matter will now be heard on Wednesday, June 15, 1988, at 11:00 a.m.

Your cooperation in this matter is greatly appreciated.

Sincerely yours, Patrick Cavanaugh

PC/dg CC: Clara Ziemski Potrzuski

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

Your petition has been received and accepted for filing this day of March

Received by: James E. Dyer

Petitioner Clara Zierski Potrzuski Patrick Cavanaugh

Chairman, Zoning Plans Advisory Committee

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353 J. Robert Haines

Petitioner's

Attorney

NOTICE OF HEARING

April 14, 1988

Dennis F. Rasmussen

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Atition for Special Meaning CASE INJURANTE EG-478-0711 SEC Fait and Mileon Avenue (3001-03 Fait Avenue) 12th Election District - 7th Councilmenic Petitioner(s): Clare Ziemski Potrzuski HEARING SCHEDULED: WEDNESDAY, JUNE 8, 1988 of 11:00 0:00

Special Hearings Non-conforming use as a ber/tavern-

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES Zoning Commissioner of Baltimore County cc: Ms. Clare Zienski Potrzuski Patrick Cavenaugh, Esq.

CONNIS DEPARTMENT OF BALTIMORE COUNTY

Posted for: Special Hearing Politicaer: Clore Zio restri Potrzosti Location of property: 3E/C Foit & Wilson Ars
6901-3 Foit Fra Location of Steps Tocing Fort An GRESSI 9' For TRO IN DY DE

Hearing Divie: Wednesday, June 15, 1988 at 31:00 a.m.
Special Hearing: Non-conforming use as a barlavern.
In the event that this Puttion is granted, a building purvet may be insued within the sharty (30) day appeal person. The Zanning Commensance will, however, exterior any impact for a stay of the insuence of and granted daring the certain for

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on May 26, 10 88

Dennis F. Rasmussen

Baltinaore County Fire Department Towson, Maryland 21204-2586 191-1500

Paul H. Reincke J. Robert Haines Zoning Commissioner

Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204

Re: Property Owner: Clara Ziemski Potrzuski

Location: SE/c Fait and Wilson Avenue

Item No.: 338

Zoning Agenda: Meeting of 3/29/88 Gentlemen:

April 5, 1988

HHE

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NEWS

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**UBLICATION** 

Dennis F. Rasmussen

19

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_ feet along an approved read in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments at this time.

CERTIFICATE OF PUBLICATION Zoning Act and Regulations of Belti-more County will hold a public hearing on the property islantified herein in Rosm 100 of the County Office Building, incuted at 145 M. Chesapeake Avenue in Towaco. Marriend as follows: THE JEFFERSONIAN, 5. Zehe Orlon \$/213 May 26 Baltimore County Zoning Commissioner

Office of Planning & Zoning Towson, Maryland 21204 J. Robert Haines June 30, 1988

Patrick Cavanaugh, Esquire 2 N. Dundalk Avenue Baltimore, Maryland 21222

RE: PETITION FOR SPECIAL HEARING

SE/corner Fait and Wilson Avenues (6901-03 Fait Avenue) 12th Election District; 7th Councilmanic District Clara Ziemski Potrzuski - Petitioner Case No. 88-478-SPH

Dear Mr. Cavanaugh:

194-3353

Enclosed please find the decision rendered on the above-referenced case. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 494-3391.

> Very truly yours, J. ROBERT HAINES Zoning Commissioner for Baltimore County

Enclosure cc: People's Counsel

\File

BELTIMORE COUNTY, MARSLAND

INTER-OFFICE CORRESPONDENCE

J. Robert Haines
Zoning Commissioner

P. David Fields, Director
Office of Planning and Zoning SUBJECT \_\_ Zoning Petitions #88-477-SpH (88-478-SpH) 88-489-SpH, 88-494-A, 88-497-SpH

In view of the subject of these petitions, this office offers no comment.

cc: Shirley Hess, People's Counsel
J. G. Hoswell
Zoning Office

cc: Patrick Cavanaugh, Eg.

ZONING OFFICE

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 27, 1988

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave. Towson, Maryland 21204

Department of Traffic Engineering

State Roads Commissio

Bureau of Fire Prevention

Health Department Project Planning

Building Department

Board of Education

Industrial Development

**Loning Administratio** 

Patrick Cavanaugh, Esquire 2 North Dundalk Avenue Baltimore, Maryland 21222

RE: Item No. 338 - Case No. 88-478-SPH Petitioner: Clara Ziemski Potrzuski Petition for Special Hearing

Dear Mr. Cavanaugh:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

JAMES E. DYER Zoning Plans Advisory Committee

JED:dt

Enclosures

cc: Frank S. Lee 1277 Neighbors Avenue Baltimore, Maryland 21237 Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

May 6, 1988

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Haryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number

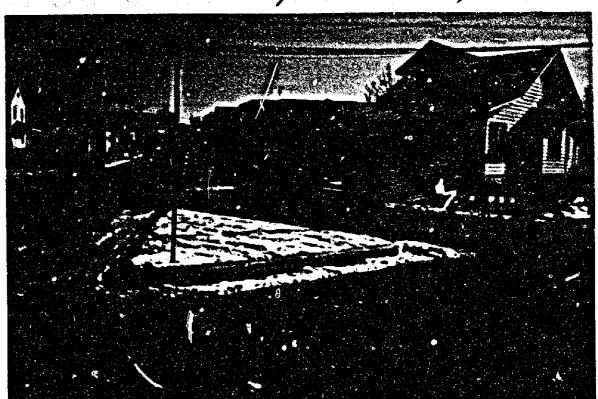
336, 337 338, 339, 340, 341, 342, 343, 344, 345, 346, and 347.

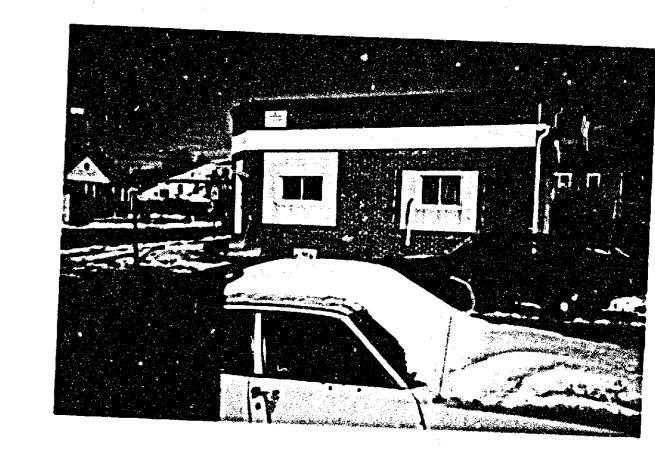
Very truly yours. Stephen E. Weber, P.E.
Assistant Traffic Engineer

SEW/RF/pm1-b



PetitionoisEphibit (2)





Petitioner Ephibit 2



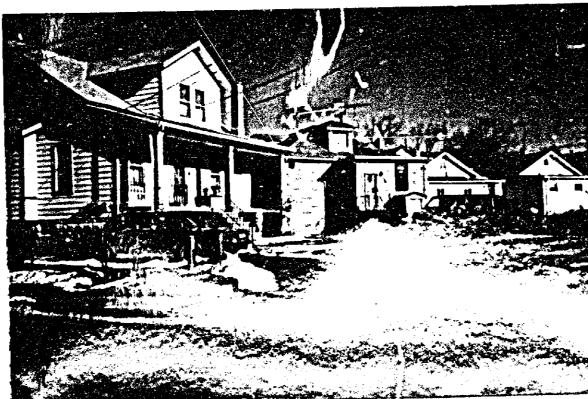
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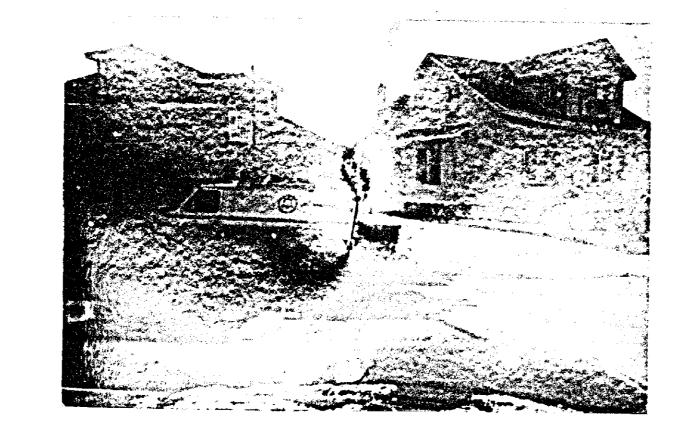
TRENE ZUBROWSKI GERTRUPE-E-BRADLEY

FRANK S. LEE

CLARA. POTRZUSKI

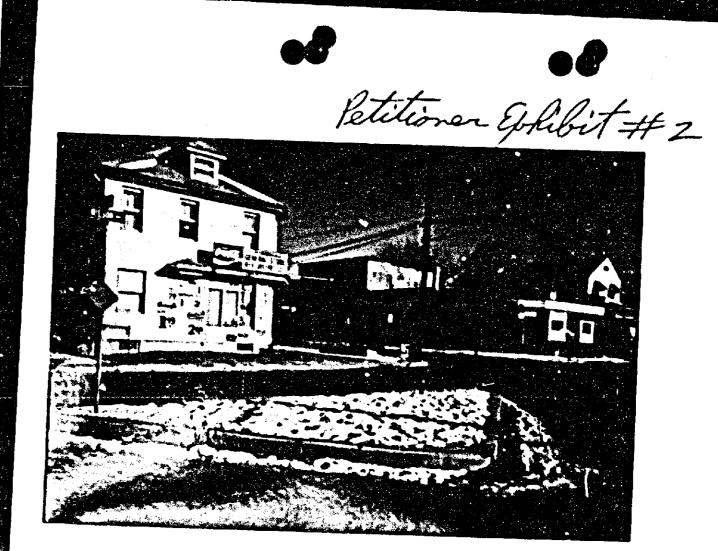
RDI Brigh Glen Rock, Pa 1301 BETHLEHEM-AVE 601 Wilson Ave (284-1031) 1915 Wilbi7d. 284-1343 1911 W.LLERD 284 1343 519 S.4574 ST 284-0450 528 S. 45 16 ft. 288-3093 64310ANVILLE-AN 21224 21237 6901 FAIT, AVE 21224 Petitioner Ephibit Z



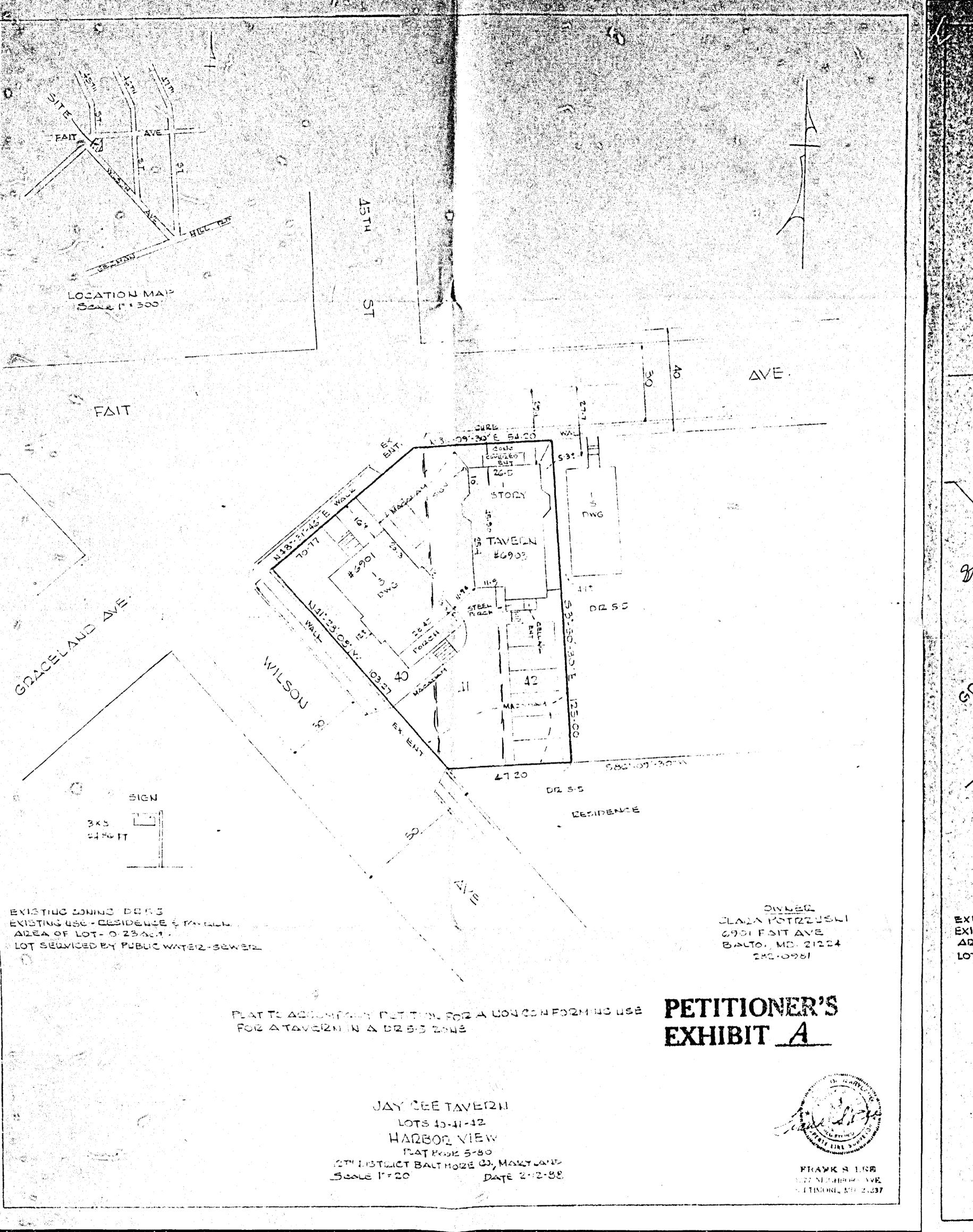


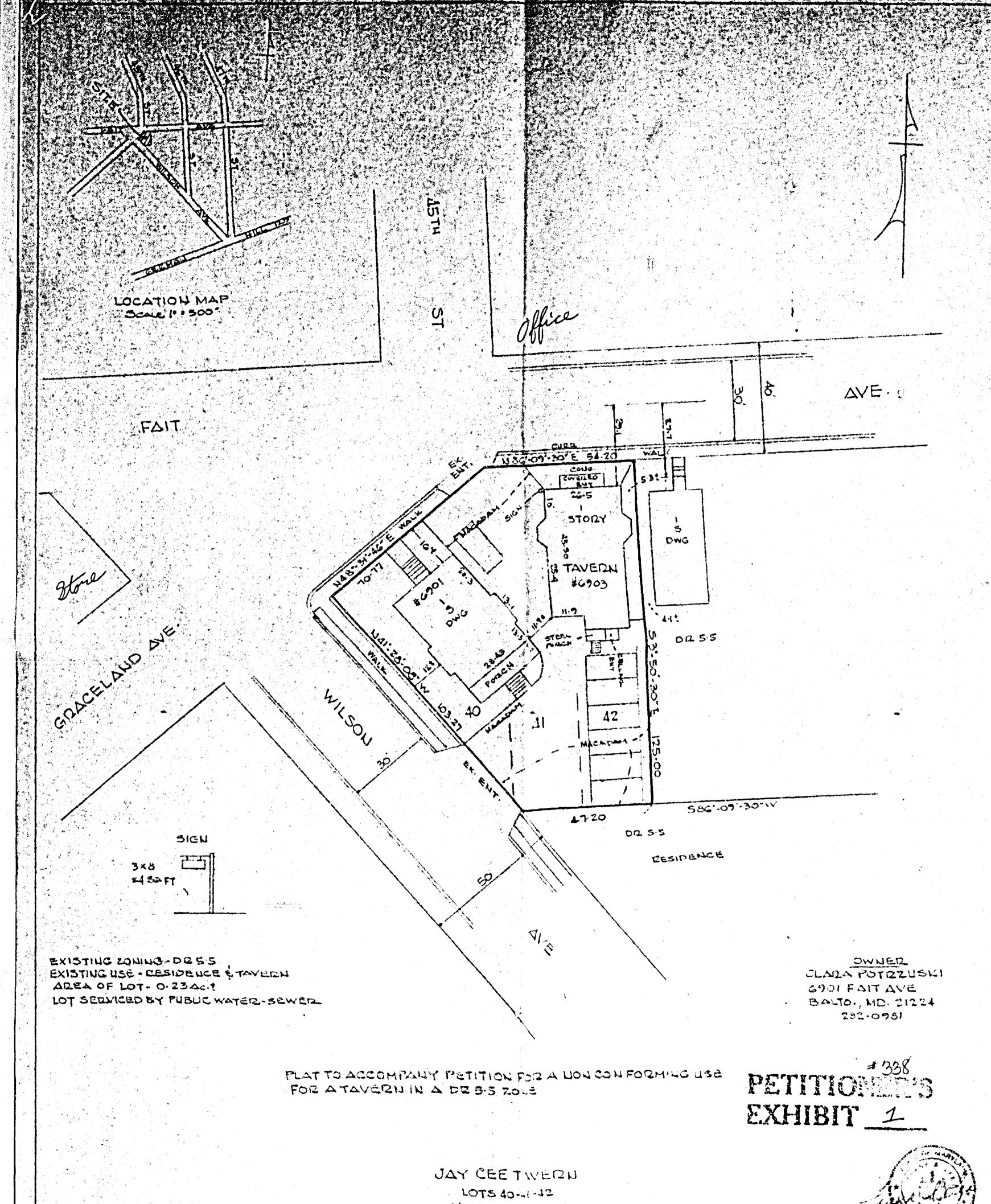
Petitioner's Ephibet #2











HARBOR VIEW

PLAT BOOK 5-80

12TH DISTRICT BALTIMOZE CO, MARYLAND

Scale 1" 120"

DATE 2-12-38

